

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
DARRELL SMITH, on behalf of himself
Individually and all others similarly situated, :

Plaintiff, :

v. :

PIONEER CREDIT RECOVERY, INC., :

Defendant. :
----- X

08 Civ. 0498 (DAB)(KNF)

AFFIDAVIT OF
ANDREW KOUROUPOS

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BURLINGTON)

ANDREW KOUROUPOS, being duly sworn, deposes and says:

1. I am a Manager of Collections for SLM Financial Corporation ("SLM Financial"). As such, I am familiar with the facts and circumstances set forth below, based on my review of the records of SLM Financial. I submit this affidavit in support of defendant Pioneer Credit Recovery, Inc.'s ("Pioneer") motion to dismiss plaintiff's Complaint.

2. In or around September 2000, plaintiff applied for a loan in the amount of \$2,500.00 (the "Loan") with SLM Financial, the creditor under the Loan. A copy of the application for the Loan (the "Application"), executed by plaintiff on or about September 3, 2000, is annexed hereto as Exhibit A.¹

3. Plaintiff executed a promissory note for the Loan (the "Note") on or about September 3, 2000. A copy of the Note is annexed hereto as Exhibit B.

¹ To protect the privacy of the plaintiff, we have redacted certain personal identifying information, such as Social Security numbers and dates of birth, from the application and other documents submitted as exhibits. Of course, unredacted copies of these documents can be made available to plaintiff and the Court.

4. The Application and the Note both correctly identify the creditor as SLM Financial.

5. The payment schedule for the Loan was as follows:

- a. Eight monthly payments of \$10.00, commencing on November 4, 2000, and due each following month on the 4th of the month;
- b. Thirty-five monthly payments of \$104.32, commencing on July 4, 2001, and due each following month on the 4th of the month; and
- c. A final payment of \$104.33 on June 4, 2004.

6. In accordance with the payment schedule set forth in ¶ 5 above, plaintiff made the following payments:

<u>Date</u>	<u>Amount</u>	<u>Declining Balance</u>
10/27/00	\$10.00	\$2720.00 ²
12/01/00	\$10.00	\$2720.00
1/05/01	\$10.00	\$2720.00
2/05/01	\$10.00	\$2720.00
3/12/01	\$10.00	\$2720.00
4/06/01	\$10.00	\$2720.00
5/03/01	\$10.00	\$2720.00
6/01/01	\$10.76	\$2720.00
7/06/01	\$10.00	\$2720.00

² The payments plaintiff made were not sufficient to pay down the principal balance. As such, the balance due did not decrease as a result of those payments.

8/06/01	\$10.00	\$2720.00
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9/25/01	\$104.32	\$2720.00
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7. On or about June 25, 2001, plaintiff requested a two-month deferment. Annexed hereto as Exhibit C is an e-mail from plaintiff to a representative from SLM Financial in which plaintiff requested the deferment.

8. SLM Financial approved plaintiff's request and, by letter, dated June 27, 2001, informed plaintiff that the Loan had been deferred during the months of July and August 2001. A copy of this letter is annexed hereto as Exhibit D.

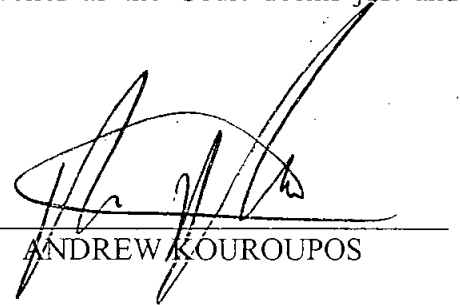
9. While the Loan was in deferment, plaintiff was not required to make his first monthly payment of \$104.32, due on July 4, 2001, or the next monthly payments of \$104.32, due on August 4, 2001.

10. Plaintiff's next payment of \$104.32 was due on September 4, 2001. Plaintiff did not make this payment until September 25, 2001. This payment brought plaintiff's loan current as of September 4, 2001.

11. Plaintiff failed to make his next payment of \$104.32, which was due on October 4, 2001. Thus, the earliest plaintiff could have been held in default is October 4, 2001, when he failed to make his next required monthly payment.

12. Plaintiff has made no other payments on the loan.

WHEREFORE, defendant SLM Financial Corporation respectfully requests that its motion to dismiss plaintiff's Complaint with prejudice be granted in its entirety and that this Court grant defendant such other and further relief as the Court deems just and proper.



ANDREW KOUROUPOS

Sworn to before me this
10th day of March, 2008.



NOTARY PUBLIC

JUDITH A. MATTHEWS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JUNE 26, 2012

SLM Financial Corporation Educational Loan Program

See Paragraph 4.2.3 below for important state law notices, including a "Notice to Consumer" for Iowa and Kansas residents and a Vermont "Notice to Consignor."

to this Promissory Note (hereinafter "Note"), the words "I", "me", "my" and "mine" mean the undersigned Borrower and Co-Borrowers(s), unless the language specifically refers to only one of the others; "you", "your" and "yours" means the Lender, its agents, and any subsequent holder of this Note; and the agreed-upon purposes, "Lender" refers to the Lender as identified on my Disclosure Statement. "School" means the school that the Student is attending. "Student" is the person whose education costs will be paid for by this loan.

1. PROMISE TO PAY

PROMISE TO PAY

I promise to pay to the order of the Lender, or its subsequent holder, according to the terms below, the sum of the Requested Loan Amount to the extent it is advanced to me, or on my behalf, the "Loan Amount"; interest on any unpaid accrued interest added to the Loan Amount; Supplemental Fees, Late Charges, Returned Check Fees, and Payment Deficient/Torbreason Fees; and, in the event of default, the Lender's or subsequent holder's costs of enforcing and reasonable attorneys' fees.

INTEREST

INTEREST

Interest on this Note will accrue at the Variable Rate (as defined below), beginning on the Disbursement Date, on the principal balance advanced and on unpaid interest added to the principal balance according to the Terms of Repayment below, until the principal balance and all accrued interest are paid in full.

The Variable Rate will change annually on the anniversary of our loan's Disbursement Date. The Variable Rate shall be equal to the annual rate equal to the sum of:

- (i) The Prime Rate as published in *The Wall Street Journal*, and effective for the business day prior to your last disbursement or the first day of the month prior to the date of the Prime Rate as published in *The Wall Street Journal*, as identified on my Disclosure Statement per annum (the "Margin"), rounded to the nearest one-fourth of one percent (0.25%);
- (ii) plus the percentage rate for my anniversary date will be determined by the Prime Rate published in *The Wall Street Journal* and in effect for the preceding December 31st. The amount of my Margin will be identified on my Disclosure Statement; If *The Wall Street Journal* does not publish the Prime Rate for a given year, then the index shall be determined by using the immediately preceding published Prime Rate. In the event that there is no Prime Rate published, the index shall be calculated by using the highest rate so published. If this index ceases to be available, you will choose a comparable substitute index.

III. TERMS OF REPAYMENT

II. TERMS OF REPAYMENT

1. **Repayment Period** Statements - I will make consecutive monthly payments in the amount and on or before the payment due date established in my Disclosure Statement and shown on my monthly statements or as my creditor bank until I have paid all of the principal and interest and any other charges I may owe under this Note.

Installments of principal and interest equal to the amount necessary to amortize the principal and interest over the term of the loan, without regard to whether

2. I will repay my loan in no more than 36 installments of principal and interest equal to the amount necessary to amortize the loan. I will make my first payment on my loan on the date of execution of this Note. In equal monthly installments of principal and interest, of interest only when indicated on my Disclosure Statement, at the Variable Rate then in effect over the number of months remaining in the Repayment Period. The length of my Repayment Period, and the number of installments, will be identified on my Disclosure Statement. Alternatively, in your option, you may adjust the term of my loan first, then the repayment amount.

3. **AMOUNTS DUE AT THE END OF THE REPAYMENT PERIOD.** - Since interest accrues daily upon the unpaid principal balance of my loan, I'll make payments after my first, then, the repayment period.

amounts and you will increase the amount of

4. **SUPPLEMENTAL FEE** You will charge me and I will pay an amount equal to the Supplemental Fee identified on my Disclosure Statement. The fee will be no more than \$8.00 of the Loan Amount. You will add the Supplemental Fee to the Loan Amount or I will pay the Supplemental Fee at the time you issue my loan disbursement. I will not be entitled to any reimbursement of Supplemental Fee after I ask my disbursement check. If I finish an assessment electronically, 60 days after the funds are disbursed to the school.

LATE CHARGES:

LATE CHARGES:
To the extent permitted by law, I will pay a late charge if I fail to make any part of a monthly payment within the number of days after it becomes due, as identified on my Disclosure Statement. The maximum late charge will be identified on my Disclosure Statement.

percentage of the total monthly payment.

CHECK RETURN FEE

percentage of the total monthly payment, as identified on my Disclosure Statement.

CHECK RETURN FEE

If I make a payment by check and that check is returned unpaid for any reason, I agree to pay a charge of 520.00 for each check so returned. Such Check Return Fee may be added to my unpaid balance (principal and accrued interest) at the rate provided in this Note, without notice.

DEFERMENT / FORBEARANCE FEE

DEFERMENT / FORBEARANCE FEE
I have requested and will, at your sole discretion, may grant me a Deferral under which I may defer a regularly scheduled payment for a maximum of two months. If I request such Deferral and you grant it, I agree to pay a Deferral Fee not to exceed \$20.00. Such fee may be added to my Principal Balance hereunder and accrue interest at the rate provided in this Note, without notice. I may request and you, at your sole discretion, may grant me up to 6 months of forbearance from making payments. If I request such forbearance and you grant it, I agree to pay a Forbearance Fee not to exceed \$50.00. Such fee may be added to my Principal Balance hereunder and accrue interest at the rate provided in this Note, without notice.

COLLECTION COSTS

VIII. **COLLECTION COSTS**
I agree to pay you all amounts, including reasonable collection agency and attorney's fees and court and other collection costs, that you incur in enforcing this agreement, plus a fee in default, up to the maximum permitted by law.

RIGHT TO PREPAY

RIGHT TO PREPAY
I have the right to prepay all or any part of my loan at any time without penalty.

I have the funds to repay all or any part of the

I have the right to prepay all or any part of my loan at any time without penalty.

WHOLE LOAN DUE

I will be in default and you will have the right to give me notice that the whole outstanding principal balance, accrued interest, and all other amounts payable to you under the terms of this Note, are due and payable at once, and to cause to make any further disbursements to me, if: (1) I fail to make any payment to you on the date due; or (2) I fail to notify you in writing of a change in my name, address, telephone number, or change of status of the Co-Borrower(s); (3) I default (as here defined) or bankruptcy) within ten days after a scheduled date; or (4) I break any of my other promises in this Note; or (4) Any bankruptcy proceeding (whether by debtor or against me, or I assign any of my assets for the benefit of my creditors); or (5) I make any false written statement in applying for this loan at any time during the Repayment Period; or (6) I die or the Co-Borrower(s) dies; or (7) I am in default on any loan; I may already have paid you, or on my behalf, more than I owe as scheduled payments to you. For Wisconsin residents only, I will be in default and you will have the rights described above, if: (a) if the interval between scheduled payments is two months or longer and I am not in default on an amount exceeding one full payment which has remained unpaid for more than 60 days after its payment is two months or longer after due date, or (b) if the interval between scheduled payments is more than two months, I remain in default on any or any part of scheduled due date and I remain in default due date, or (b) if the interval between scheduled payments is more than two months, I remain in default on any or any part of scheduled due date and I remain in default due date, or (b) if the interval between scheduled payments is more than two months, I remain in default on any or any part of scheduled due date and I remain in default due date. I will also be in default if I fail to pay the amount of this Note, the breach of which substantially impairs my ability to pay the amounts due under this Note.

My failure to receive a coupon book or a statement does not relieve me of my responsibility and obligation of making my required monthly loan payments in accordance with the terms and conditions of this loan. You may report the status of my loan and my payment history to credit reporting agencies. If I default, I will be required to pay interest on this loan accruing after default at the same rate of interest applicable to this loan prior to my default. The interest rate after default will be subject to adjustment in the same manner as before default.

NOTICES

NOTICES

1. I will send written notice to you within ten days after any change in my name, address, or telephone number.

2. Any notice required to be given to me by you will be effective when mailed by first class mail to the latest address you have for me.

3. I understand that the following notices are required by or necessary under state law and that these notices may not describe all of the rights that I have under state and federal law. Unless otherwise indicated, each notice applies to Borrowers and Co-Borrowers who live in the state on that date they sign this state and to Borrowers and Co-Borrowers who are residents of the state.

ARIZONA: I agree to pay an effective rate of interest equal to the rate of interest applicable to the Note that may be deemed to be interest under applicable law. Interest resulting from any other fees or charges paid or payable by me in connection with this Note may be deemed to be interest under applicable law.

CALIFORNIA RESIDENTS: As required by law, I am hereby notified that a negative credit report reflected on my credit record may be submitted to a credit reporting agency if I fail to fulfill the terms of any credit obligations.

GEORGIA: I waive my right to require the Lender to take action against the principal as provided in O.C.G.A. § 60-7-24.

IDaho: This Note is governed by applicable federal law and the laws of the state where the Lender is located, as indicated on my Disclosure Statement, without regard to conflict of law rules, and by applicable consumer protection laws of Idaho, including the Idaho Credit Code (other than laws relating to interest, fees, and charges).

INDIANA: If I am in default, I will be obligated to pay collection agency costs, attorney's fees, other collection costs, or court costs (unless independently provided by the court).

ILLINOIS: NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

KANSAS: NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.

KANSAS: This Note is governed by applicable federal law and the laws of the state where the Lender is located, as indicated in my Disclosure Statement, without regard to conflict of law rules, and by applicable consumer protection laws of Kansas, including the Kansas Uniform Consumer Credit Code (other than laws relating to interest, fees, and charges).

KANSAS AND MAINE RESIDENTS: The provisions of this Note regarding when I will be in default do not apply. Instead I will be in default: (a) if I fail to make a payment as required by this Note or (b) if the prospect of my payment or performance is significantly impaired (the burden of establishing the prospect of a payment is on the Lender).

MAINE: The provisions of this Note regarding the payment of collection agency costs, attorney's fees, other collection costs, and court costs do not apply to Maine residents. This Note is governed by applicable federal law and the laws of the state where the Lender is located, as indicated on my Disclosure Statement, without regard to conflict of law rules, and by applicable consumer protection laws of Maine, including the Maine Consumer Credit Code (other than laws relating to interest, fees, and charges).

MISSOURI: ORAL LOAN AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE TO PROTECT YOU (BORROWER(S) AND US (CREDITOR)) FROM MISUNDERSTANDING OR DISAPPOINTMENT. ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THIS AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

NEW YORK: By signing as Co-Borrower I am acting as a "guarantor" and if there is default, I agree to pay all sums due as set forth in the Note. The Lender can collect this debt from me without first trying to collect from the Borrower.

NEW YORK AND VERMONT: The Lender may obtain a consumer report (credit report) about me from a consumer reporting agency (credit bureau). Upon my request, I will be informed whether or not the Lender obtained a consumer report about me and if so the name and address of the consumer reporting agency that furnished the report. If my application is approved subsequent consumer reports may be requested or used in connection with (a) renewal or extension of the credit for which I have applied, (b) reviewing my loan, (c) taking collection action on my loan or (d) other legitimate purposes associated with my loan.

NORTH CAROLINA: By signing as a Co-Borrower I waive my right to require the Lender to proceed in accordance with the provisions of N.C.G.S. §§ 26-1 through 26-9 and acknowledge that the Lender may proceed directly against me without first proceeding against the Borrower or any collateral for the Loan.

OHIO: The Ohio law against discrimination requires that all creditors make credit equally available to all creditworthy consumers and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

OKLAHOMA: If I am in default with the total amount of collection agency costs, attorney's fees, other collection costs and court costs.

TEXAS RESIDENTS: To contact the Lender about this account call 1-800-638-2482. This contract may be subject to whole or in part to Texas law which is enforced by the Consumer Credit Commission, 2601 North Lamar Boulevard, Austin, TX 78705-4207, phone (512) 470-1285 or (800) 538-1579. Contact the Commissioner relative to any inquiries or complaints.

UTAH BORROWERS AND CO-BORROWERS: As required by law, I am hereby notified that a negative credit report reflecting on my credit record may be submitted to a credit reporting agency if I fail to fulfill the terms of my credit obligations.

VERMONT: NOTICE TO CONSUMER: YOUR SIGNATURE ON THIS NOTE MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

VIRGINIA: By signing as Co-Borrower, I waive my right to require the Lender to proceed in accordance with provisions of §§ 25-25 and 49-26 of the Code of Virginia and acknowledge that the Lender may proceed directly against me without first proceeding against the Borrower or any collateral for the Loan.

WEST VIRGINIA RESIDENTS: The provisions of this Note regarding the payment of collection agency costs, attorney's fees, other collection costs, and court costs do not apply.

WISCONSIN BORROWERS AND CO-BORROWERS: The provisions of this Note regarding default do not apply. Instead, I will be in default (a) if the interval between scheduled payments is two months or less, and I permit to be outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after its scheduled due date or deferred due date, or I fail to pay the first payment or the last payment, within 40 days of its scheduled due date or deferred due date, or (b) if the interval between scheduled payments is more than two months, I permit to be outstanding all or any part of one scheduled payment which has remained unpaid for more than 60 days after its scheduled due date or deferred due date. I will also be in default if I fail to observe any other provision of the Note, the breach of which materially impairs my ability to pay the amounts due under this Note.

WISCONSIN RESIDENTS ONLY: No provision of a marital property agreement (pre-marital agreement), a unilateral statement under Section 786.58 of the Wisconsin Statutes, or a court decree under Section 786.70 adversely affects the interest of the creditor unless, prior to the time the credit is granted, the creditor is furnished a copy of the marital property agreement, statement, or decree or has actual knowledge of the adverse provision, when the obligation to the creditor is incurred. If the loan for which I am applying is granted, my spouse will also receive notification that credit has been extended to me. For marital Wisconsin residents, my spouse confirms that this loan obligation is being incurred in the interest of my marriage or family.

Signature of Wisconsin Borrower

Signature of Wisconsin Co-Borrower


XII. ADDITIONAL AGREEMENT

- The proceeds of this loan will be used for the educational expenses at the School, including living expenses. I understand that when you accept this signed Note, you are not agreeing to lend me money and that there will be no such agreement until the time the loan is actually disbursed. You have the right to lend an amount less than the Requested Loan Amount and/or to accept or reject my Co-Borrower(s) or my application. I will be required to repay only the Loan Amount, plus interest, my late charge, and other applicable charges.
- I understand that the Lender is located in the state identified on my Disclosure Statement and this Note will be entered into in that state. Consequently, the provisions of this Note will be governed by applicable federal laws and the applicable laws of that state, without regard to conflict of law rules. I agree that any suit I bring against you must be brought in the county in which you maintain your principal place of business. I agree that any suit against me in the event I default on this Note may, to the extent permitted by law, be brought in the county in which you maintain your principal place of business, regardless of where I am now living or where I may be living at the time of suit.
- Upon receipt of the Disclosure Statement, I will review it and if I am not satisfied with the terms of my loan as approved, I may cancel this Note and all disbursements. To cancel this Note, I will contact you in writing within three days of receipt by me of the loan check to you, or if funds are disbursed electronically, I will instruct the School within three days of receipt by me of the Disclosure Statement, to return such funds to you.
- Without losing any of your rights under this Note you may accept (a) late payments, or (b) as permitted by law, partial payments, even if marked "payment in full", "without recourse" or similar language. You may delay or fail to exercise, or waive any of your rights on any occasion without losing your right to exercise the right at any future date or on any future occasion. I waive my notice of dishonor, notice of protest, presentment, demand for payment, and all other notices or demands in connection with this Note and consent to pay and all obligations, renewals, or releases of any party liable upon this loan or any

This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be covered by the Federal Arbitration Act ("FAA") (9 U.S.C. 961-10). The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law. Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction. This Arbitration Provision shall survive termination of your loan. If any portion of this Arbitration Provision is deemed invalid or unenforceable under the FAA, it should not invalidate the remaining portions of this Arbitration Provision.

STATEMENT AND SIGNATURES: I have reviewed the information I have been presented in the Note and and certify that it is true, correct and complete in the best of my knowledge and belief. I authorize you, your agent(s) and affiliates, and the School from time to time to gather and share credit, employment, and other information about me, from and with each other, consumer reporting agencies and third parties in accordance with applicable law. My authorization covers, without limitation, the sharing of any credit or other information from this Note or any information about the loan disclosed under this Note. I understand that a credit report is obtained for this loan application. I will not sign this Note before reading both sides of it even if otherwise advised. By signing this Note, I acknowledge that I have received an exact copy of it, that I have read it, and that I understand and agree to the terms and conditions of the Note printed on both sides of this Note, including the "Privacy Disclosure". A Co-Borrower is equally liable for this loan with the Borrower.

THIS IS AN EDUCATION LOAN THAT MUST BE REPAYED.

 Signature of _____ (Borrower)	Date 3-3-08	Signature of _____ (Co-Borrower)	Date
DERRELL E SMITH			

Borrower's Social Security Number 4	Signature of _____ (Co-Borrower)	Date
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2,700.00
 Loan Amount



"Derrell Smith"

on 06/25/2001 11:39:48 AM

To: JORGE A GOODRIGE/SallieMae@SallieMae
CC:
Subject: Payment deferment

313718

Mr. Goodrige.

After speaking with you earlier I'm writing to you with a request for a two or ~~one~~ month payment deferment.

This is because I have just moved and am not working at this time. I thank you in advance for your assistance. I await your response.

Regards

Mr. Derrell Smith

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

2 Month Deferment
July & August
Resume Payments
Sept 2001



06/27/01

DERRELL E SMITH
[REDACTED]

Re: SLM Financial Loan #313718

Pursuant to your request, we have extended your above referenced loan for the July, 2001 through August, 2001 payments. We have added \$20.00 to your loan to complete this transaction.

Your next monthly payment is due on September 4, 2001.

Respectfully,

Charles M. Craig
Collection Manager
(856) 810-3621

P.O. Box 470 • 3000 Lincoln Drive • Suite F • Marlton, NJ 08053
Phone: (856) 810-2711 • Fax: (856) 810-2718
